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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,423	01/04/2002	Nicholas Want	ATA-232CN	1748

7590

01/12/2005

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT PAPER NUMBER

3761

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/039,423

Applicant(s)

WANT ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 64-73 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 64-73 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 64-68 are rejected under 35 U.S.C. 102(b) as being anticipated by Riedener (2,173,637).

Riedener discloses a fluid recover system, as shown in figure 1, comprising a housing having a top surface 5' and a collection chamber 5. A latching connector has a connecting element and a mating connecting element 6 for connection with a tube 7. The connecting element is shown but not

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numbered in figure 1, and shown as 28' In figure 6, and is integrally molded to the top surface 5' or 13', as shown in figures 1 and 6.

With respect to claim 65, the integrally molded connecting element is shown in figure 1 as being a female portion configured to receive the mating connecting element 6.

With respect to claim 66, the integrally molded connecting element 28' is shown in figure 6 as being a male portion configured to receive the mating connecting element 26'.

With respect to claim 67, the integrally molded connecting element 28' extends above the top surface 13' and is therefore conveniently accessible, as shown in figure 6.

With respect to claim 68, connection and disconnection of the integrally molded connecting element 28' involves only attachment or removal of mating connecting element 26', which is capable of being performed with one hand.

Claims 69, 70, and 72 are rejected under 35 U.S.C. 102(b) as being anticipated by Herweck et al. (5,286,262).

Herweck discloses a fluid recovery system, as shown in figure 1, comprising a housing 10 having a top surface and a collection chamber 12. A handle 210 is coupled to the top surface and raised above other components on the top surface. The handle 210 is fully capable of being held by two people simultaneously.

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With respect to claim 70, the handle 210 is integrally molded to the housing 10, as disclosed in column 16, lines 5-6.

With respect to claim 72, the handle 210 is sized and dimensioned such that it is taller than the other components on the top surface, as shown in figure 1, and therefore will provide protection to the other components should an object fall on the top surface.

Claims 69 and 73 are rejected under 35 U.S.C. 102(e) as being anticipated by Christian et al. (6,152,902).

Christian discloses a fluid recovery system, as shown in figure 1, comprising a housing 12 having a top surface, as shown in figure 4. A handle 54 is coupled to the top surface and raised above other components on the top surface, as shown in figure 4. The handle 54 is fully capable of being held by two people simultaneously.

With respect to claim 73, the handle 54 is centered front to back and laterally, as shown in figure 1, and therefore the fluid recovery system will be balanced when lifted by the handle 54.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

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said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 71 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herweck et al. (5,286,262).

Herweck discloses all aspects of the claimed invention with the exception of the handle being about 5 inches long. Herweck discloses in column 16, lines 8, the handle being about 4 inches long. It would have been obvious to one of ordinary skill in the art at the time of invention to make the handle about 5 inches long, since it has been held that were the general conditions of the claim are disclosed in the art, determining the optimum or workable ranges involves only routine skill in the art. *In re Allen*, 105 USPQ 233.

### ***Response to Arguments***

Applicant's arguments filed 21 October 2004 have been fully considered but they are not persuasive.

In response to applicant's arguments, the recitation of collecting fluid has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Further, nothing in the design

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of the container of Riedener makes it unsuitable for collection of fluids, and the container is fully capable of being used to collect fluids.

In response to applicant's arguments that integrally molded connectors are not recited by the prior art, it is noted that Riedener shows in figure 1 connecting element (not numbered) protruding from the top surface 5' of the container 5. A mating element 6 is connected to the connecting element, and a tube 7 is then connected to the mating element 6.

In response to the applicant's arguments that a handle sized for use by two people is not recited by the prior art, it is noted that no exact dimension of the handle is claimed. Both Herweck and Christian disclose handles that are sufficient for two people to grasp at once. The instant specification described on page 6, lines 30-32, that the preferred handle length is about 5 inches, but that it would be obvious to one skilled in the art that other lengths are suitable. Therefore, even if the handles disclosed by Herweck and Christian were not suitably sized (though this is not the case), handle size is by applicant's own admission obvious to modify.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory

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action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

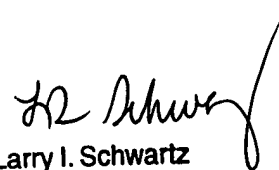
Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CWA  
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January 7, 2005

  
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